

2013 IL App (2d) 120672-U
No. 2-12-0672
Order filed November 22, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-4755
)	
MARTAVION D. SANDERS,)	Honorable
)	John R. Truitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's convictions of first-degree murder and aggravated battery with a firearm were affirmed where it was not error to allow the jury to view autopsy photographs; the photographs were relevant to prove the cause of death and were not unduly prejudicial.
- ¶ 2 On December 3, 2008, defendant was indicted for first-degree murder (720 ILCS 5/9-1(a)(2) (West 2008)); unlawful use of weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)); aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(A) (West 2008)); aggravated battery with a firearm (720 ILCS 5/12-3 (West 2008)); and aggravated discharge of a firearm

(720 ILCS 5/24-1.2(a)(2) (West 2008)). After a jury trial, defendant was convicted of first-degree murder, aggravated unlawful use of a weapon, aggravated discharge of a firearm, and aggravated battery with a firearm. Defendant appeals. We affirm.

¶ 3

BACKGROUND

¶ 4 At trial, defendant's defense was misidentification. The sole issue defendant raises in this appeal is whether the trial court erred in allowing certain autopsy photographs of the decedent's internal organs to go to the jury during its deliberations. As the facts of what occurred leading to defendant's indictment are not at issue, we will briefly summarize them.

¶ 5 In the late evening hours of November 22, or early morning hours of November 23, 2008, a man whom witnesses identified as defendant was present at Chivos Bar in Rockford, Illinois. When defendant lighted a cigarette inside the bar, "security" personnel escorted him outside. Rodney Fair and Tyrone Thompson, bouncers employed by the bar, were stationed outside the bar to make sure that defendant did not reenter the bar. Sometime later, according to Fair, defendant was on the sidewalk approaching the bar. Fair moved away a distance because he sensed trouble. Defendant demanded to be allowed to reenter the bar, and Thompson, who was at the bar's door, denied him entrance. Fair saw defendant shoot Thompson, who slumped to the pavement. At the sight of the muzzle flash, Fair began moving behind a parked car when defendant turned toward Fair. Fair felt nothing but later discovered that he, too, had been shot. Fair survived, but Thompson did not.

¶ 6 At trial, one of the witnesses the State presented was forensic pathologist Dr. Mark Peters, who performed an autopsy on Thompson's body. Dr. Peters testified that he did an external examination and an internal examination. In explaining his external examination, Dr. Peters used an illustrated diagram of a human body. Relevant to the cause of death was a

gunshot wound. Dr. Peters showed on the diagram that the entrance wound was on the right side of Thompson's neck and that the exit wound was on the left side of Thompson's back approximately below the shoulder blade. According to Dr. Peters, the wound was through-and-through, meaning that the bullet had passed completely through Thompson's body and was not recovered at the autopsy. Dr. Peters testified that the bullet's trajectory was in a downward angle, right to left. The cause of death was hemorrhagic shock caused by a gunshot wound of the neck and chest.

¶ 7 In explaining his internal examination, Dr. Peters referred to four 4x6 inch colored photographs. People's exhibit 91 depicted Thompson's left lung. In the photograph, the organ is completely detached from the body and is resting on what appears to be a wooden surface. There are smears of blood beneath the lung. Dr. Peters testified that the photograph showed a gunshot wound to the lung. People's exhibit 92 depicted Thompson's larynx, which contains the vocal chords and epiglottis, or the upper part of the airway. This had been removed from the body and was photographed on the same or similar wooden surface as the lung. The organ depicted is bright red and roughly triangular shaped. A smear of blood is visible on the left lower portion of the photograph. According to Dr. Peters, exhibit 92 showed hemorrhagic areas caused by the gunshot wound and the path of the bullet. People's exhibit 93 was an internal view of Thompson's neck showing a lacerated jugular vein. Visible in the photograph are what resembles musculature and Dr. Peters' gloved hand poking a forceps into a hole surrounded by a dark, almost black area. Dr. Peters testified that the gunshot wound caused the lacerated jugular vein. People's exhibit 94 depicted a green rod going through the entrance wound in the neck then beneath the collarbone and into the right rib and going into the chest cavity. The purpose of the green rod was to track the trajectory, or direction, of the bullet as it passed through

Thompson's body. On exhibit 94, a portion of Thompson's lower jaw is barely visible. The green rod appears on the right side of the photograph, above or over Thompson's head, and the rod is threaded through soft tissue, what appears to be bone, and yellow tissue that appears to be fat.

¶ 8 At trial, Dr. Peters also identified four other 4x6 inch color autopsy photographs that depicted Thompson's external condition. He sequenced the photographs to first explain the external gunshot wounds, and then he used corresponding internal views to explain the internal damage the gunshot caused. For instance, exhibit 97 depicts the entrance wound on the right side of Thompson's neck. Dr. Peters followed discussion of exhibit 97 with exhibit 93, the internal view of the neck and lacerated jugular vein, and so on, explaining that the bullet first hit the jugular vein, then the trachea, then the lung. In this way, the jury obtained a coherent delineation of the cause and manner of death. Dr. Peters testified that the overall significance of the photographs of the internal organs was to show that the wounds were caused by the same gunshot. Dr. Peters also testified to the particular significance of each internal photograph. He explained that exhibit 93 showed that the laceration of the jugular vein caused bleeding that contributed to Thompson's death. Exhibit 92, the larynx, depicted hemorrhaging caused by the gunshot. Exhibit 91, the lung, showed "extensive" hemorrhage caused by the gunshot. Exhibit 94, the green rod, showed the overall path of the bullet through the vital organs. Defendant did not object to the admission of the photographs into evidence, but he did object to sending the photographs of the internal organs to the jury room. In allowing the jury to see the photographs, the trial court noted that the photographs were not "a full body shot with organs hanging out of the body or something the court would agree are—could be argued as being grotesque and would

inflame the jury. *** [T]hey just portray the organ in most instances.^[1]” The court added that it did not think that the photographs were “so grotesque that they would inflame the jury.”

¶ 9 Following deliberation, the jury returned guilty verdicts of first-degree murder, aggravated unlawful use of a weapon, aggravated discharge of a weapon, and aggravated battery with a firearm. The jury made a finding that defendant personally discharged the firearm that caused Thompson’s death. The trial court, after a *Krankel* hearing, denied defendant’s *pro se* posttrial motion alleging that trial counsel was ineffective. The trial court also denied the posttrial motion filed by defendant’s counsel. Defendant was sentenced to a term of 40 years’ imprisonment for first-degree murder plus an enhancement of 25 years and was sentenced to a consecutive 15-year term of imprisonment for aggravated battery with a firearm. The State dismissed the charge of unlawful use of a weapon by a felon, which had been severed from the indictment, and the convictions of the offenses of aggravated unlawful use of a weapon and aggravated discharge of a weapon were vacated. Defendant filed this timely appeal.

¶ 10 ANALYSIS

¶ 11 Defendant contends that allowing the jury to see the autopsy photographs of Thompson’s internal organs served only to inflame the passions of the jurors and prejudice them against him, depriving him of a fair trial. The record shows that, while defendant objected to the photographs being sent to the jury, he did not include the alleged error in his posttrial motion. Both an objection and a written posttrial motion raising the issue are necessary to preserve the issue for

¹ At page 16 of his opening brief, defendant misstates the record, saying that the judge “found that it was arguable that the photographs were grotesque and could inflame the jury, yet without further comment, allowed their publication.” In reading the record, it is apparent that the judge actually said the opposite of what defendant says the judge said.

review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant recognizes that he forfeited this issue. He argues that we may reach the issue, despite the forfeiture, under the doctrine of plain error. The plain-error doctrine allows a reviewing court to reach a forfeited error in two circumstances: (1) where the evidence is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79. Here, defendant argues only the second prong of plain error.

¶ 12 We will take a moment to clarify what errors the second prong of plain-error review reaches. In *People v. Glasper*, 234 Ill. 2d 173 (2009), our supreme court held that a presumptively prejudicial error requiring automatic reversal occurs “only” where the error is deemed “structural,” *i.e.*, “a systemic error which serves to ‘erode the integrity of the judicial process and undermine the fairness of the defendant’s trial.’ ” *Glasper*, 234 Ill. 2d at 197-98 (quoting *Herron*, 215 Ill. 2d at 186). The court in *Glasper* noted that, in *Neder v. United States*, 527 U.S. 1, 8 (1999), the Supreme Court stated that it had found structural error to exist “only in a very limited class of cases.” The *Neder* court described that class as a complete denial of counsel, a biased trial judge, racial discrimination in the selection of a grand jury, denial of self-representation, denial of a public trial, and a defective reasonable-doubt instruction. *Neder*, 527 U.S. at 8. In *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010), our supreme court confirmed that in *Glasper* it had equated the second prong of plain-error review with structural error, again citing *Neder*. *Neder* itself clarified that a structural error is a defect that affects the framework within which the trial proceeds, rather than simply an error in the trial process. *Neder*, 527 U.S. at 8. However, we must first determine whether allowing the autopsy photographs to go to the jury was error before we engage in a plain-error analysis. See *People v. Piatkowski*, 225 Ill. 2d

551, 565 (2007) (“[T]he first step is to determine whether error occurred ***.”)

¶ 13 If photographic evidence is relevant to prove facts at issue, and if the probative value outweighs the potential prejudice, photographs are admissible, even if they are gruesome. *People v. Abrego*, 371 Ill. App. 3d 987, 998 (2007). It is the trial court’s function to weigh the probative value and potential prejudicial effect of the evidence. *People v. Shum*, 117 Ill. 2d 317, 353 (1987). The decision as to which evidentiary items should be sent into the jury room rests within the discretion of the trial court judge, whose decision will not be disturbed absent a showing of prejudicial abuse. *Shum*, 117 Ill. 2d at 353.

¶ 14 Defendant argues that the photographs at issue had no probative value because the only issue raised by defendant at trial was the identity of the shooter. However, when a defendant in a murder trial pleads not guilty, the prosecution is allowed to prove every element of the crime charged and every relevant fact. *People v. Chapman*, 194 Ill. 2d 186, 219-20 (2000). To sustain a conviction for first-degree murder, the State must prove, *inter alia*, that a defendant performed acts that caused the death of the victim. *People v. Perry*, 2011 IL App (1st) 081228, ¶ 29. The victim’s cause of death through an act of the accused is a fact the State must prove. *People v. Mars*, 2012 IL App (2d) 110695, ¶ 16. Consequently, the autopsy photographs showing that the gunshot inflicted by defendant caused the injury to each of the vital organs depicted, which caused the hemorrhagic shock that caused death, were probative. Contrary to defendant’s characterization of the trial judge’s remarks, the record shows that the trial court examined each of the photographs and found that they were not grotesque or inflammatory, as they mostly depicted just the organs. We interpret the judge’s remarks as a finding that the photographs’ probative value outweighed any potential prejudice. The photographs are 4x6 inches, not enlargements, and are not mounted or embellished in any way. The views depicted are

straightforward and documentary in nature. While they show blood, it appears as smeared stains rather than pools. As in *People v. Yoho*, 164 Ill. App. 3d 17, 21 (1987), where it was held not to be an abuse of discretion to show the jury an autopsy photograph, the photographs in our case also do not show the body generally. Dr. Peters used each photograph to explain his testimony and conclusions. Where photographs serve to aid the jury in understanding the testimony of a pathologist, they may be shown to the jury. *Chapman*, 194 Ill. 2d at 221. Consequently, the trial court did not abuse its discretion in allowing the jury to view the photographs.

¶ 15 The two cases on which defendant relies for reversal are easily distinguishable. In *People v. Garlick*, 46 Ill. App. 3d 216, 224 (1977), the court held that a color photograph of the deceased's massive head wound was gruesome and "needlessly prejudicial" where it was not probative of any issue in the case. In *Garlick*, the defendant admitted committing the offense and raised the defense of insanity. *Garlick*, 46 Ill. App. 3d at 224. Here, defendant denied committing the murder, and, as we commented above, the State, upon a defendant's plea of not guilty, is allowed to prove every element of the crime charged and every relevant fact. *Chapman*, 194 Ill. 2d at 219-20. In *People v. Coleman*, 116 Ill. App. 3d 28 (1983), the issue was the *admissibility* of a color slide of the victim's decomposing, maggot-infested, partially autopsied body that showed teeth missing and an exposed brain. *Coleman*, 116 Ill. App. 3d at 35. Although the State in *Coleman* argued that the slide was probative of the victim's identity and cause of death, the State's pathologist testified that the slide was of no use to him. *Coleman*, 116 Ill. App. 3d at 36. In contrast, in our case, admissibility was not an issue, and the photographs were probative and aided the jury in understanding Dr. Peters' testimony. It is not error to allow the jury to view even gruesome photographs where they are probative of the issues of the cause of the victim's death and the force and manner in which the injuries were inflicted

and where they corroborate the pathologist's testimony concerning the nature and extent of the injuries suffered. *People v. Green*, 209 Ill. App. 3d 233, 242 (1991). Here, Thompson suffered lethal injuries to multiple vital organs, leaving the prosecution open to possible defense arguments regarding which injuries were inflicted by the gunshot. Dr. Peters testified that the photographs were relevant to show that the single gunshot caused all of the injuries. As the trial court noted, the photographs were not inflammatory where they did not depict the organs attached to the autopsied body. Accordingly, we conclude that the trial court did not err in allowing the photographs to go to the jury during its deliberations. Because there was no error, we need not consider defendant's plain-error argument.

¶ 16 Defendant next argues that defense counsel was ineffective for failing to include the issue of the photographs in the posttrial motion. The two-prong test for assessing whether trial counsel was ineffective was articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). First, a defendant must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness; second, he must show that the deficient performance prejudiced him in that, but for counsel's deficient performance, there is a reasonable probability that the result would have been different. *People v. Houston*, 226 Ill. 2d 135, 144 (2007). The failure to establish either prong is fatal to an ineffectiveness claim. *People v. Manning*, 241 Ill. 2d 319, 350 (2011). Here, defendant cannot establish prejudice. As we discussed in detail above, the photographs were relevant and their probative value outweighed any potential prejudicial effect. The four photographs were small and noncumulative. Thus, even if defense counsel had included the issue in the posttrial motion, preserving it for review, the argument would have failed on the merits. Accordingly, defendant's ineffective-assistance claim fails.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Winnebago County is

affirmed.

¶ 18 Affirmed.